



April 10, 2000

Mr. George P. Morrill, II
Bee County District Attorney
156th Judicial District of Texas
Bee County Courthouse, Room 205
Beeville, Texas 78102

OR2000-1402

Dear Mr. Morrill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133883.

The District Attorney of Bee County (the “county”) received a request for records indicating

the exact number of times Texas Department of Criminal Justice (TDCJ) Executive Director Wayne Scott has referred an employee assault on a TDCJ prisoner to your office pursuant to Chapter 500, § 501.002 of the Texas Government Code, and § 500.002 of the Texas Government Code; the date of each referral, the substance of each referral (description of injuries, description of assault, the reason for the report to your office, etc.), the identities of the TDCJ employees involved in each referral, the identities of each TDCJ prisoner involved in each referral, the action you took on each referral, and the disposition of each the referral.

You claim that the responsive information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the document you have submitted for our review.¹ You state that this document is an exemplar of the letters the county receives from TDCJ’s Internal Affairs Division advising the county that employees have used excessive force in violation of TDCJ policy. We assume that this “representative sample” of records is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). However, we note that your brief to this office indicates that the county may have additional responsive information. You state that the county preserves letters from TDCJ employees

¹We note that section 552.301(e)(2) requires the governmental body to label the copy of the submitted documents to indicate which exceptions apply to the information. However, marking the information in black marker obscures the information. In the future, you must submit the information in its entirety, without any redactions, in order for this office to properly review the information and make a determination. Please use another method, such as a highlighter, brackets or tabs to label the excepted information.

and officers regarding use of force incidents for those criminal investigations in which indictments or informations are issued. You state that these letters "would be in the files relating to the specific prosecutions and would be extremely difficult to locate." You tell us that "[t]he search for this information would be laborious and expensive."

It is well-established that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision Nos. 561 at 8-9 (1990), 87 (1975). Moreover, the difficulty of complying with the Public Information Act does not determine the availability of information. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977); *see also* Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). We caution that this open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We now address your claimed exceptions to the disclosure of the submitted information. You contend that the requested information may be withheld under section 552.103 of the Government Code. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. For information to be excepted from public disclosure by section 552.103(a), (1) litigation *involving the governmental body* must be pending or reasonably anticipated and (2) the information at issue must relate to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You state that Civil Action No. 4:99CV02217, a lawsuit brought against several TDCJ employees and officers, is pending in the Southern District of Texas, Houston Division. You further state that "Executive Director Scott's execution of his duties under Section 501.002 is an issue in that case, or at least is the subject of discovery." However, you do not assert, nor is it apparent, that the county is involved in this litigation. *See* Open Records Decision Nos. 638 (1996) (stating that "[t]he purpose of section 552.103(a) is to protect the litigation interests of the governmental body claiming the exception"), 551 (1990) (asserting that section 552.103 enables a governmental body to protect its interest in litigation). Therefore, we find that you may not withhold the requested information under section 552.103.

You also claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In raising section 552.108, you state only that the requested records are "information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication." Such a general contention is not sufficient; you must specifically demonstrate that one of the subdivisions of section 552.108 is applicable. In the absence of a sufficient demonstration that withholding the information in question is necessary to further a specific law enforcement interest, the information is not excepted from public disclosure under section 552.108. We therefore conclude that the requested information is not protected under section 552.108. Accordingly, the county must release to the requestor information concerning any referral from TDCJ regarding an employee assault on a TDCJ prisoner.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

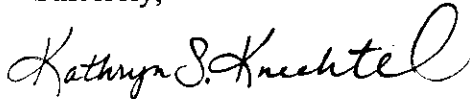
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ljp

Ref: ID# 133883

Encl. Submitted documents

cc: Ms. Yolanda Torres
American Civil Liberties Union
Dallas Chapter
200 Crescent Court, 11th Floor
Dallas, Texas 75201
(w/o enclosures)